

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

IN RE:)	Chapter 11
)	
ORION REFINING CORPORATION)	Case No. 03-11483 (MFW)
)	
DEBTOR)	
)	
MICHAEL G. SYRACUSE d/b/a)	
INTERSTATE SUPPLY COMPANY,)	Adversary Proceeding No. 03-53939
and TEXAS ICO, INC.)	
)	
Plaintiffs,)	
)	
v.)	
)	
ORION REFINING CORPORATION)	Rel. D.I. _____
)	
Defendant.)	

**MICHAEL G. SYRACUSE d/b/a INTERSTATE SUPPLY COMPANY
and TEXAS ICO, INC. DESIGNATION OF ITEMS FOR
RECORD ON APPEAL AND STATEMENT OF ISSUES ON APPEAL**

Michael G. Syracuse d/b/a Interstate Supply Company and Texas ICO, Inc. (collectively, “Appellants”), by and through their undersigned attorneys, and pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, hereby designate the items to be included in the record and set forth the statement of issues on their appeal from the Order of the United States District Court for the District of Delaware (Walrath, M.) entered on August 8, 2006 (Docket No. 109) and the accompanying Memorandum Decision (Docket No. 108) that affirmed the April 17, 2006 Order of the United States Bankruptcy Court for the District of Delaware Denying Michael G. Syracuse's Motion for Partial Summary Judgment, Granting Orion Refining Corporation's Motion for Partial Summary Judgment, and Dismissing Count I of the Adversary Complaint

Filed By Michael G. Syracuse. (Docket No. 78) and (ii) the accompanying Memorandum Decision (Docket No. 77).

I. Designation Of Items For Record On Appeal.

A. Items Entered on the Bankruptcy Court's Docket

The following items (including any and all exhibits and attachments) entered on the Bankruptcy Court's docket in Adversary Proceeding No. 03-53939, are hereby designated as items to be included in the record on appeal to the United States District Court for Delaware.

Filing Date	Docket Number	Docket Text
06/19/2003	<u>1</u>	Complaint by Michael G. Syracuse against Orion Refining Corporation. Receipt Number 066772, Fee Amount \$150 Nature of Suit: 456 (Declaratory Judgment). (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit # <u>3</u> Exhibit C# <u>4</u> Exhibit D) (Lastowski, Michael) Modified on 6/20/2003 (MNH,). (Entered: 06/19/2003)
11/26/2003	<u>7</u>	Motion for Leave to File Reply / <i>Motion for Leave to File Michael G. Syracuse D/B/A Interstate Supply Company, Texas ICO, Inc.'s Amended Complaint for Declaratory Judgment as well as for Damages and Injunctive Relief and Administrative Complaint</i> Filed by Michael G. Syracuse. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Proposed Form of Order # <u>3</u> Certificate of Service) (Riley, Richard) (Entered: 11/26/2003)
07/16/2004	<u>37</u>	[DENIED - SEE DOCKET NO. 78] Motion For Summary Judgment - <i>Motion for Partial Summary Judgment on Behalf of Plaintiffs, Michael G. Syracuse d/b/a Interstate Supply Company and Texas ICO, Inc. on the Issue of Title</i> Filed by Michael G. Syracuse. (Attachments: # <u>1</u> Certificate of Service) (Winter, Christopher) Modified on 4/18/2006 (BMT,). (Entered: 07/16/2004)
07/16/2004	<u>38</u>	Brief <i>on Behalf of Plaintiffs, Michael G. Syracuse, d/b/a Interstate Supply Company, Texas ICO, Inc., in Support of Plaintiffs' Motion for Partial Summary Judgment on the Issue of Title</i> (related document(s) <u>37</u>) Filed by Michael G. Syracuse (Attachments: # <u>1</u> Exhibit 1# <u>2</u> Exhibit 2# <u>3</u> Exhibit 2 - Part Two# <u>4</u> Exhibit 3 - Part

		One# <u>5</u> Exhibit 3 - Part Two# <u>6</u> Exhibit 3 - Part Three# <u>7</u> Exhibit 3 - Part Four# <u>8</u> Exhibit 3 - Part Five# <u>9</u> Exhibit 4# <u>10</u> Exhibit 5# <u>11</u> Exhibit 6# <u>12</u> Exhibit 7# <u>13</u> Certificate of Service) (Winter, Christopher) (Entered: 07/16/2004)
07/16/2004	<u>39</u>	Brief <i>on Behalf of Plaintiffs, Michael G. Syracuse, d/b/a Interstate Supply Company, Texas ICO, Inc., in Support of Plaintiffs' Motion for Partial Summary Judgment on the Issue of Title</i> (related document(s) <u>37</u>) Filed by Michael G. Syracuse (Attachments: # <u>1</u> Exhibit 1# <u>2</u> Exhibit 2# <u>3</u> Exhibit 2 - Part Two# <u>4</u> Exhibit 3 - Part One# <u>5</u> Exhibit 3 - Part Two# <u>6</u> Exhibit 3 - Part Three# <u>7</u> Exhibit 3 - Part Four# <u>8</u> Exhibit 3 - Part Five# <u>9</u> Exhibit 4# <u>10</u> Exhibit 5# <u>11</u> Exhibit 6# <u>12</u> Exhibit 7# <u>13</u> Certificate of Service) (Winter, Christopher) (Entered: 07/16/2004)
08/23/2004	<u>47</u>	MOTION FOR PARTIAL SUMMARY JUDGMENT Filed by CYPRESS ASSOCIATES, LLC, as ORC Distribution Trust Representative. (Attachments: # <u>1</u> Certificate of Service) (Briggs, Thomas) Modified on 8/24/2004 (SDA,). (Entered: 08/23/2004)
08/23/2004	<u>48</u>	Brief <i>DEFENDANT'S OPENING BRIEF IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT AND ANSWERING BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT</i> (related document(s) <u>47</u>) Filed by CYPRESS ASSOCIATES, LLC, as ORC Distribution Trust Representative (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Certificate of Service) (Briggs, Thomas) (Entered: 08/23/2004)
09/10/2004	<u>63</u>	Brief <i>Orion Refining Corporation's Reply Brief In Support Of Its Motion For Partial Summary Judgment</i> (related document(s) <u>47</u>) Filed by CYPRESS ASSOCIATES, LLC, as ORC Distribution Trust Representative (Attachments: # <u>1</u> Certificate of Service) (Briggs, Thomas) (Entered: 09/10/2004)
07/20/2005	<u>76</u>	Order Regarding Motion For Partial Summary Judgment (related document(s) <u>68</u> , <u>50</u>) Order Signed on 7/15/2005. (DKF,) (Entered: 07/20/2005)
04/17/2006	<u>77</u>	Memorandum of Opinion Denying Michael G. Syracuse's Motion for Partial Summary Judgment, Granting Orion Refining Corporation's Motion for Partial Summary Judgment, and Dismissing Count I of the Adversary Complaint Filed By Michael G. Syracuse. (related document(s) <u>48</u> , <u>63</u> , <u>39</u> , <u>37</u> , <u>47</u> , <u>38</u>) (JMP,) (Entered: 04/17/2006)

04/17/2006	<u>78</u>	Order Denying Michael G. Syracuse's Motion for Partial Summary Judgment, Granting Orion Refining Corporation's Motion for Partial Summary Judgment, and Dismissing Count I of the Adversary Complaint Filed By Michael G. Syracuse. (related document(s) <u>77</u> , <u>37</u> , <u>47</u>) Signed on 4/17/2006. (JMP,) (Entered: 04/17/2006)
04/27/2006	<u>81</u>	[DENIED - SEE DOCKET NO. 109] Motion to Reconsider <i>Motion to Alter, Amend and/or Reconsider Judgment and/or for New Trial on Behalf of Plaintiff, Michael G. Syracuse d/b/a Interstate Supply Company and Texas ICO, Inc.</i> Filed by Michael G. Syracuse. (Attachments: # <u>1</u> Proposed Form of Order # <u>2</u> Certificate of Service) (Lastowski, Michael) Modified on 8/9/2006 (BMT,). (Entered: 04/27/2006)
04/27/2006	<u>82</u>	Motion To Stay <i>Plaintiffs' Emergency Motion for a Stay of Judgment Pending Disposition of Plaintiffs' Motion for an Order Amending Judgment, and Motion to Amend Findings</i> Filed by Michael G. Syracuse. (Attachments: # <u>1</u> Proposed Form of Order # <u>2</u> Certificate of Service) (Lastowski, Michael) (Entered: 04/27/2006)
04/27/2006	<u>83</u>	Motion to Shorten Time <i>Motion for Emergency Telephonic Hearing and to Shorten Notice and Approve Form, Manner and Sufficiency of Notice</i> Filed by Michael G. Syracuse. (Attachments: # <u>1</u> Notice # <u>2</u> Proposed Form of Order # <u>3</u> Certificate of Service) (Lastowski, Michael) (Entered: 04/27/2006)
04/27/2006	<u>84</u>	Memorandum of Law <i>in Support of Motion to Alter, Amend and/or Reconsider Judgment and/or for New Trial on Behalf of Plaintiff, Michael G. Syracuse d/b/a Interstate Supply Company and Texas ICO, Inc.</i> (related document(s) <u>81</u>) Filed by Michael G. Syracuse (Attachments: # <u>1</u> Certificate of Service) (Lastowski, Michael) (Entered: 04/27/2006)
04/28/2006	<u>85</u>	Order Granting Motion for Emergency Telephonic Hearing and to Shorten Notice and Approve Form, Manner and Sufficiency of Notice. (related document(s) <u>83</u>) Order Signed on 4/28/2006. (LCN,) (Entered: 04/28/2006)
05/02/2006	<u>86</u>	Memorandum of Law (<i>AMENDED</i>) <i>in Support of Motion to Alter, Amend and/or Reconsider Judgment and/or for New Trial on Behalf of Plaintiff, Michael G. Syracuse d/b/a Interstate Supply Company and Texas ICO, Inc.</i> (related document(s) <u>81</u>) Filed by Michael G. Syracuse (Attachments: # <u>1</u> Certificate of Service)

		(Lastowski, Michael) (Entered: 05/02/2006)
05/05/2006	<u>89</u>	Order (AMENDED) Regarding Stipulation Between Cypress Associates, LLC, as ORC Distribution Trust Representative and Michael G. Syracuse d/b/a Interstate Supply Company and Texas ICO, Inc. (related document(s) <u>87</u> , <u>81</u> , <u>83</u> , <u>78</u> , <u>85</u> , <u>82</u>) Order Signed on 5/4/2006. (LCN,) (Entered: 05/05/2006)
05/11/2006	<u>91</u>	<i>Brief In Opposition To Plaintiff's Motion For Reconsideration And Related Relief Concerning Memorandum Opinion And Order, Dated April 17, 2006</i> (related document(s) <u>81</u> , <u>77</u> , <u>78</u> , <u>86</u>) Filed by Cypress Associates, LLC, as ORC Distribution Trust Representative (Attachments: # <u>1</u> Certificate of Service) (Werkheiser, Gregory) (Entered: 05/11/2006)
05/18/2006	<u>92</u>	<i>Brief in Reply to Defendants' Opposition to Plaintiffs' Motion for Reconsideration and Related Relief Concerning Memorandum Opinion and Order, Dated April 17, 2006</i> (related document(s) <u>91</u>) Filed by Michael G. Syracuse (Attachments: # <u>1</u> Certificate of Service) (Lastowski, Michael) (Entered: 05/18/2006)
06/09/2006	<u>99</u>	Order Granting Plaintiffs' Emergency Motion for a Stay of Judgment Pending Disposition of Plaintiffs' Motion for an Order Amending Judgment, and Motion to Amend Findings. (Related Doc # <u>82</u> , <u>90</u>) Order Signed on 6/8/2006. (LCN,) Modified on 6/9/2006 to add additional related docket no. (LCN,). (Entered: 06/09/2006)
07/11/2006	<u>106</u>	<i>Supplemental Brief in Support of Plaintiffs' Motion for Reconsideration and Related Belief Concerning Memorandum Opinoin and Order, Dated April 17, 2006</i> (related document(s) <u>81</u>) Filed by Michael G. Syracuse d/b/a Interstate Supply Company, and Texas ICO, Inc. (Attachments: # <u>1</u> Certificate of Service) (Lastowski, Michael) (Entered: 07/11/2006)
07/21/2006	<u>107</u>	<i>Objection to Plaintiffs' Motion for Reconsideration</i> (related document(s) <u>81</u>) Filed by Cypress Associates, LLC, as ORC Distribution Trust Representative (Attachments: # <u>1</u> Exhibit A - Transcript of June 28, 2006 Motion Hearing) (Briggs, Thomas) (Entered: 07/21/2006)
08/08/2006	<u>108</u>	Memorandum Opinion Denying Michael G. Syracuse's Motion for Reconsideration. (related document(s) <u>81</u> , <u>91</u> , <u>92</u> , <u>86</u>) (JAF,) (Entered: 08/08/2006)

08/08/2006	<u>109</u>	Order Denying Michael G. Syracuse's Motion for Reconsideration. (related document(s) <u>108</u>) Signed on 8/8/2006. (JAF,) (Entered: 08/08/2006)
08/09/2006	<u>110</u>	Notice of Service (related document(s) <u>108</u> , <u>109</u>) Filed by Cypress Associates, LLC, as ORC Distribution Trust Representative (Werkheiser, Gregory) (Entered: 08/09/2006)
08/09/2006	<u>111</u>	Certificate of Service (related document(s) <u>108</u> , <u>109</u>) Filed by Michael G. Syracuse d/b/a Interstate Supply Company, and Texas ICO, Inc. (Lastowski, Michael) (Entered: 08/09/2006)
08/17/2006	<u>112</u>	Notice of Appeal Number (AP-06-51). Fee Amount \$255. (related document(s) <u>77</u> , <u>108</u> , <u>109</u> , <u>78</u>) Filed by Michael G. Syracuse d/b/a Interstate Supply Company, and Texas ICO, Inc.. Appellant Designation due by 8/28/2006. (Attachments: # <u>1</u> Certificate of Service) (Lastowski, Michael) Modified to add appeal number on 8/18/2006 (BMT,). (Entered: 08/17/2006)
08/17/2006	113	Receipt of filing fee for Notice of Appeal (Ap)(03-53939-MFW) [appeal,ntcapl] (255.00). Receipt Number 2666703, amount \$ 255.00. (U.S. Treasury) (Entered: 08/17/2006)
08/17/2006	<u>117</u>	Opening Brief IN SUPPORT OF CYPRESS ASSOCIATES, LLCs MOTION PURSUANT TO RULE 7054(a) FOR EXPRESS DIRECTION FOR THE ENTRY OF JUDGMENT AND EXPRESS DETERMINATION THAT THERE IS NO JUST REASON FOR DELAY (re: Adv. D.I. 77, 78) (related document(s) <u>116</u>) Filed by Cypress Associates, LLC, as ORC Distribution Trust Representative (Attachments: # <u>1</u> Exhibit A# <u>2</u> Certificate of Service) (Briggs, Thomas) Modified duplicate text on 8/18/2006 (BMT,). (Entered: 08/17/2006)
08/18/2006	<u>118</u>	Clerk's Notice Regarding Filing of Appeal Number (AP-06-51). (related document(s) <u>112</u>) (BMT,) (Entered: 08/18/2006)

II. Statement Of Issues On Appeal.

These Appellants state the following issues on this appeal:

1. Whether the Bankruptcy Court erred in determining that title to the Surplus

Material did not pass to Appellants upon the execution of the contract.

2. Whether the Bankruptcy Court erred in determining that there was a suspensive condition contained within the contract which prevented title to the Surplus Material from passing to the Appellants.

3. Whether the Bankruptcy Court erred in determining that the Debtor's fault did not barred any suspensive condition.

4. Whether the Bankruptcy Court erred in determining that the filing of the Bankruptcy Petition created a new entity such that the Debtor in Possession had greater rights than the Debtor.

Dated: August 28, 2006
Wilmington, Delaware



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